

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 29, 2013

SENATE BILL

No. 750

Introduced by Senator Wolk
(Coauthor: Assembly Member Fong)

February 22, 2013

An act to add Chapter 2.5 (commencing with Section 1954.201) to Title 5 of Part 4 of Division 3 of the Civil Code, and to add Chapter 8.5 (commencing with Section 537) to Division 1 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 750, as amended, Wolk. Building standards: water meters: multiunit structures.

(1) The Water Measurement Law requires every water purveyor to require, as a condition of new water service on and after January 1, 1992, the installation of a water meter to measure water service. That law also requires urban water suppliers to install water meters on specified service connections, and to charge water users based on the actual volume of deliveries as measured by those water meters in accordance with a certain timetable.

This bill would require a water purveyor that provides water service to a newly constructed multiunit residential structure or newly constructed mixed-use residential and commercial structure that submits an application for a water connection after January 1, 2014, to require the installation of either a water meter, as defined, or a submeter, as defined, to measure water supplied to each individual dwelling unit. The bill would require the owner of the structure to ensure that a water submeter installed for these purposes complies with laws and regulations

governing installation, approval of meter type, maintenance, reading, billing, and testing of water submeters, including, but not limited to, the California Plumbing Code. The bill would exempt certain buildings from these requirements.

(2) Existing law generally regulates the hiring of dwelling units; and, among other things, imposes certain requirements on landlords and tenants. Among these requirements, existing law requires landlords to provide tenants with certain notices or disclosures pertaining to, among other things, pest control and gas meters.

This bill would, if a water purveyor requires the installation of a meter or submeter, as specified, or a submeter has been installed, impose further requirements on landlords, relating to submetered water service to individual dwelling units. The bill would prohibit a landlord from charging tenants separately for water service *in a property with submeters* ~~unless a water and~~ the submetering system is installed, operated, and maintained as specified. The bill would require a landlord to make certain disclosures to the tenant prior to the execution of the rental agreement, including, among other things, that the tenant will be billed for water separately from the rent and that the tenant will also be billed for a portion of any recurring fixed charge billed to the property by the water purveyor, as specified. The bill would specify that a landlord may only bill a tenant for volumetric water usage, as specified, and a portion of any recurring fixed charge billed to the property by the water purveyor, as specified. The bill would specify that the landlord's billing cycle for water service must match that of the water purveyor and that each bill must include certain information. The bill would prohibit a landlord from charging additional fees related to water service, except as provided. The bill would require a landlord to maintain and make available installation, maintenance, and testing records to a tenant upon request, as specified. The bill would require a landlord to make certain repairs on the water system in a dwelling, as specified. The bill would permit the assessment of late fees, as specified.

In addition to actual damages, this bill would permit a tenant to recover from the landlord certain damages, costs, and fees for a violation of these provisions. The bill would authorize a city, county, a city and county, or district to enforce these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.5 (commencing with Section 1954.201) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 2.5. WATER SERVICE

1954.201. It is the intent of the Legislature in enacting this chapter to do both of the following:

(a) To encourage the conservation of water in multifamily residential rental buildings through means either within the landlord's or the tenant's control.

(b) To ensure that the practices involving the submetering of dwelling units for water service are just and reasonable, and include appropriate safeguards for both tenants and landlords.

1954.202. As used in this chapter:

(a) "Billing agent" means a person or entity who contracts to provide submetering services to a landlord, including billing.

(b) "Landlord" includes all agents of the landlord, billing agents, and successors in interest to the real property interests of the landlord. "Landlord" does not include a tenant who rents all or a portion of a dwelling unit to subtenants. "Landlord" does not include a common interest development, as defined in Section 4100 of the Civil Code.

(c) "Property" means real property containing two or more dwelling units that is served by a single meter.

(d) "Rental agreement" includes a fixed-term lease.

(e) "Renting" includes leasing, whether on a periodic or fixed-term basis.

(f) "Submeter" means a device that measures water consumption of an individual rental unit within a multiunit residential structure or mixed-use residential and commercial structure, and which is owned and operated by the landlord. "Submeter" includes submeters, if more than one submeter is being used to measure water usage in a particular dwelling unit.

(g) "Water service" includes any charges for other services, including sewage or storm water services, that are based in whole or in part on the volume of water usage recorded by a water meter.

(h) “Water purveyor” means a water purveyor as defined in Section 512 of the Water Code.

1954.203. A landlord shall not charge tenants separately for water service ~~unless a water and in a property with submeters~~ unless the submetering system is installed, operated, and maintained as follows:

(a) The submeter is certified for commercial purposes pursuant to law, including, but not limited to, Section 12500.5 of the Business and Professions Code.

(b) The installation conforms to all laws, including, but not limited to, regulations established pursuant to Section 12107 of the Business and Professions Code.

(c) The installation was performed by a licensed service provider.

(d) The submeter is operated in compliance with regulations established pursuant to Section 12107 of the Business and Professions Code.

(e) The submeter for a dwelling unit measures only water that is supplied for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession and control of the tenant of the dwelling unit.

(f) The primary submeter indicator or remote reader may be easily accessed and read by the tenant of the dwelling unit, and read by the owner landlord without entering the dwelling unit.

(g) Each submeter is reinspected and recalibrated within the time limits specified in law or regulation.

(h) All plumbing fixtures and fittings within each dwelling unit conform to all laws regarding habitability of dwellings and water conservation.

(i) This section shall not be construed to require a water purveyor to assume responsibility for ensuring compliance with any law or regulation governing installation, certification, maintenance, and testing of water submeters and associated onsite plumbing.

1954.204. Prior to executing a rental agreement, a landlord that intends to charge a tenant separately for water service shall clearly disclose the following information to the tenant, in writing, in at least 10-point type, which may be incorporated into the rental agreement:

1 (a) That the tenant will be billed for water service separately
2 from the rent.

3 (b) The average bill for water service for units at the property
4 over the most recent calendar year or, if the building is less than
5 one year old, a portion of that calendar year.

6 (c) The frequency of submeter readings.

7 (d) The due dates and payment procedures for bills for water
8 service.

9 (e) If a billing agent is used, the name, address, e-mail address,
10 normal hours of operation, and toll-free telephone number of the
11 agent.

12 (f) The date the submeter was last tested and calibrated, and the
13 date by which it must be retested and recalibrated under law.

14 (g) A statement in substantially the following form:

15
16 The landlord (or name of landlord) shall charge you (or name
17 of tenant, or term used in the rental agreement for the tenant) for
18 water use at the same rate that the (water purveyor) bills its
19 customers for residential use. To find out what the rate charged
20 by (water purveyor) is, contact (water purveyor) at (address),
21 (telephone number).

22
23 (h) A statement that the tenant shall be charged for water service
24 at the exact rate or rates charged by the water purveyor serving
25 the property.

26 (i) A statement that the tenant shall also be charged for a portion
27 of any recurring fixed charge billed to the property by the water
28 purveyor and that the tenant's portion of the recurring fixed charge
29 shall be proportional to the amount of water the tenant uses in
30 relation to the usage for the entire property.

31 (j) The current amount of the recurring fixed charge referred to
32 in subdivision (i).

33 (k) A statement that no other administrative, connection,
34 disconnection, billing, or other periodic fee or charge, except for
35 a late fee or submeter testing fee, may be assessed. If the landlord
36 reserves the right to charge a late fee, the amount and terms of the
37 late fee shall also be disclosed.

38 (l) The location of the submeter, and directions on how to read
39 the submeter.

1 1954.205. (a) As part of a water service bill, a landlord shall
2 only bill a tenant for volumetric usage of water service pursuant
3 to subdivision (b), and a portion of any recurring fixed charge for
4 water service billed to the property by the water purveyor pursuant
5 to subdivision (f). The landlord shall not impose any periodic,
6 connection, termination, or other fee, however denominated, except
7 for late fees or testing fees as provided in this chapter.

8 (b) The amount of the volumetric portion of the bill shall be
9 calculated by multiplying the volume of water used, as determined
10 by the submeter for the billing period in question, by the rate or
11 rates for volumetric usage established by the purveyor of water
12 service for residential use.

13 (c) If the rates established by the water purveyor change, the
14 bill shall be prorated to reflect the time each rate was in effect.
15 The landlord may assess charges for the entire billing period based
16 on the lower rate.

17 (d) If a submeter reading for the beginning or end of a billing
18 period is, in good faith, not available, the landlord may bill the
19 tenant 75 percent of the amount originally disclosed to the tenant
20 pursuant to subdivision (b) of Section 1954.204.

21 (e) No charges shall be imposed under this chapter if readings
22 have been unavailable for more than three months.

23 (f) The amount of the recurring fixed charge for water service
24 billed to the property by the water purveyor to be charged to the
25 tenant shall be based on the proportion of the tenant's volumetric
26 water use, as shown on the submeter, in relation to the water use
27 of the entire property, as shown on the property's water meter.

28 1954.206. (a) The billing cycle for a water service bill pursuant
29 to this chapter shall match that of the water purveyor.

30 (b) Submeters shall be read within three days of the same point
31 in each billing cycle.

32 (c) Bills shall be due at the same point in each billing cycle.
33 However, bills shall be due no earlier than 10 days after mailing,
34 if mailed, or five days after personal delivery.

35 (d) Bills shall include the following information:

36 (1) The submeter readings for the beginning and end of the
37 billing cycle, the dates read, and the indicated consumption.

38 (2) The unit of measure for the readings and usage.

39 (3) The rate or rates charged per unit of measure.

40 (4) The amount of the current charges for volumetric use.

1 (5) The amount of any recurring fixed charge for water service
2 billed to the property by the water purveyor.

3 (6) The total water consumption for the property, as indicated
4 by the property's water meter.

5 (7) The percentage of the total water consumption of the
6 property that was consumed by the tenant.

7 (8) The amount of current charges assessed to the tenant for the
8 tenant's share of any recurring fixed charges for water service
9 billed to the property by the water purveyor.

10 (9) A separate entry showing past due amounts, if any.

11 (10) A separate entry showing any previously imposed late
12 charges.

13 (11) The total amount due.

14 (12) The due date for the bill.

15 (13) A statement of the amount of any new late charges, if any,
16 and when the late charges would apply. Late charges shall be
17 imposed pursuant to Section 1954.211.

18 (14) The name, mailing address, e-mail address, telephone
19 number, and the regular business hours of the person or persons
20 the tenant may call with questions or concerns regarding the bill,
21 and who is authorized to make any necessary adjustments to the
22 bill. If a billing agent is used, the name of the entity shall also be
23 disclosed and the telephone number of the billing agent shall be
24 toll-free.

25 1954.207. A submeter shall be read within three days of the
26 beginning or end of a tenancy to determine the amount of the first
27 or last bill for water service. Tenancies that begin or end within
28 three days of a normal reading may be billed as usual.

29 1954.208. (a) A landlord shall not charge or recover, or allow
30 to be charged or recovered, any of the following:

31 (1) Any additional servicing, administrative, establishment,
32 maintenance, meter reading, meter testing, billing, or submetering
33 fees, or any other fee, including those charged by a billing agent,
34 except as provided in Section 1954.210.

35 (2) Any fees billed to the landlord by the water purveyor, billing
36 agent, or any other person for any deposit, disconnection,
37 reconnection, late payment, or any other water service related
38 purpose.

39 (b) This section does not prohibit a landlord from recovering
40 any costs listed in subdivision (a) that are incorporated into the

1 rent for a dwelling unit, if the rent is a fixed amount per rental
2 period, the charges are not listed separately, and the rental charges
3 are otherwise lawful.

4 1954.209. The landlord shall maintain and make available in
5 writing, at the tenant's request, within seven days after the request,
6 the following:

7 (a) All installation and maintenance records of the submeter in
8 the tenant's dwelling unit, including the name, license number,
9 and contact information of the service provider who installed or
10 serviced the submeter.

11 (b) The most recent test results of the submeter in the tenant's
12 dwelling unit.

13 (c) The method and sources used to determine the rate at which
14 the tenant is charged for water.

15 1954.210. (a) If the water system in a dwelling unit does not
16 function properly, including leaks, fixtures allowing unnecessary
17 water consumption, or a malfunctioning submeter, the tenant may
18 request that the landlord repair the problem. The landlord shall
19 make the repairs within seven days.

20 (b) A tenant may request that a landlord have a submeter tested
21 for accuracy. The landlord shall respond to the request within seven
22 days, and the test shall be carried out as soon as reasonably
23 practicable. The test shall be performed by a service provider or
24 other person authorized by law to perform the test. If the test shows
25 that the submeter is inaccurate beyond the tolerances established
26 by law, the landlord shall repair or replace the submeter. If the test
27 shows the submeter was indicating more usage than the actual
28 amount used and beyond established tolerances, the landlord shall
29 refund the estimated overcharge to the tenant within 30 days of
30 receipt of the results.

31 (c) The landlord shall pay for the cost of the test if either:

32 (1) The tenant requests the test because the submeter has
33 indicated that water usage has increased more than 25 percent for
34 two consecutive billing periods over the previous three billing
35 periods.

36 (2) The submeter is found to be inaccurate beyond the tolerances
37 established by law.

38 (d) The tenant shall pay for the test in all other cases, up to a
39 maximum of seventy-five dollars (\$75).

1 (e) The landlord is not required to test a submeter under
2 subdivision (b) if the submeter was tested and found accurate
3 within two years prior to the tenant's request and the landlord
4 provides the written results of that test to the tenant. However, the
5 landlord shall have the submeter tested if the tenant pays in advance
6 for the entire cost of the test.

7 1954.211. (a) A landlord may impose a late fee of up to 5
8 percent for any water service bill not paid within 20 days of its
9 due date. If the 20th day falls on a Saturday, Sunday, or holiday,
10 the late fee shall not be imposed until the day after the first business
11 day following the 20th day.

12 (b) (1) Notwithstanding Section 1950.5, if a water service bill
13 remains unpaid after the time described in subdivision (a) expires,
14 the landlord may, in lieu of a late fee, deduct the amount due from
15 the tenant's security deposit. The landlord may require an
16 additional deposit of security following a deduction, if the deposit
17 would be otherwise lawful under Sections 827 and 1950.5.

18 (2) The landlord may also deduct an unpaid water service bill
19 from the security deposit upon the ending of a tenancy, provided
20 that the last water service bill showing the amount due is attached
21 to the documentation required by Section 1950.5, and all the other
22 requirements of that section are met.

23 (c) If a water service bill remains unpaid for 30 days after its
24 due date, the nonpayment shall constitute a curable breach of a
25 material lease obligation. The landlord may commence an action
26 to remedy the breach, as provided by law.

27 (d) Water service charges under this chapter shall not constitute
28 rent.

29 (e) A landlord shall not shut off the water or otherwise interfere
30 with the provision of water service to a dwelling unit for any
31 reason, including nonpayment of a bill assessed pursuant to this
32 chapter.

33 1954.212. In addition to actual damages sustained by a tenant
34 for a violation of this chapter, the tenant may recover from the
35 landlord three times the amount of actual damages, a civil penalty
36 equal to one month's rent, reasonable attorney's fees, and court
37 costs. A landlord shall not be liable for a civil penalty if the
38 landlord proves that the violation was a good faith, unintentional
39 mistake.

1 1954.213. A city, county, city and county, or district may
2 enforce this chapter.

3 1954.214. The rights or obligations established under this
4 chapter shall not be waived. Any purported waiver is void.

5 1954.215. This chapter applies only to property where
6 submeters have been installed or where a meter and submeters are
7 installed pursuant to Chapter 8.5 (commencing with Section 537)
8 of Division 1 of the Water Code.

9 SEC. 2. Chapter 8.5 (commencing with Section 537) is added
10 to Division 1 of the Water Code, to read:

11
12 CHAPTER 8.5. MULTIUNIT STRUCTURES
13

14 537. (a) The following definitions govern the construction of
15 this chapter:

16 (1) “Meter” has the same meaning as “water meter” in Section
17 516.

18 (2) “Submeter” means a device that measures water consumption
19 of an individual unit within a multiunit residential structure or
20 mixed-use residential and commercial structure, and is read by the
21 owner of the structure or the owner’s agent.

22 (b) Structures in all of the following categories shall be exempt
23 from this chapter:

24 (1) Low-income housing. For purposes of this paragraph,
25 “low-income housing” means a residential building financed with
26 low-income housing tax credits, tax-exempt mortgage revenue
27 bonds, general obligation bonds, or local, state, or federal loans
28 or grants, for which the rents of the occupants in lower income
29 households, as defined in Section 50079.5 of the Health and Safety
30 Code, do not exceed rents prescribed by deed restrictions or
31 regulatory agreements pursuant to the terms of the financing or
32 financial assistance, and for which not less than 25 percent of the
33 dwelling units within the building are designated for occupancy
34 by lower income households, as defined in Section 50079.5 of the
35 Health and Safety Code.

36 (2) Student dormitories.

37 (3) Long-term health care facilities, as defined in Section 1418
38 of the Health and Safety Code.

39 (4) Time-share property, as defined in subdivision (aa) of
40 Section 11212 of the Business and Professions Code.

1 (5) Residential care facilities, as defined in subdivision (k) of
2 Section 1569.2 of the Health and Safety Code.

3 (c) This chapter does not apply to a structure that is greater than
4 four stories in height above grade if the owner, or his or her agent,
5 demonstrates to the satisfaction of the water purveyor that the
6 structure's plumbing configuration incorporates multiple points
7 of entry in each dwelling unit and renders the installation of
8 submeters infeasible.

9 (d) A submeter used to measure water supplied to an individual
10 residential unit that is required to be installed by a water purveyor
11 pursuant to this chapter, shall be of a type approved pursuant to
12 Section 12500.5 of the Business and Professions Code, and shall
13 be installed and operated in compliance with regulations established
14 pursuant to Section 12107 of the Business and Professions Code.

15 538. (a) Each water purveyor that sells, leases, rents, furnishes,
16 or delivers water service to a newly constructed multiunit
17 residential structure or newly constructed mixed-use residential
18 and commercial structure for which an application for a water
19 connection, or more than one connection, is submitted after January
20 1, 2014, shall require the installation of a water meter or submeter
21 to measure the water supplied to each individual dwelling unit as
22 a condition of new water service.

23 (b) (1) If the water purveyor requires installation of submeters
24 pursuant to subdivision (a), the owner of the structure shall ensure
25 that each submeter installed complies with all laws and regulations
26 governing installation, approval of meter type, maintenance,
27 reading, billing, and testing of water submeters, including, but not
28 limited to, the California Plumbing Code.

29 (2) This subdivision does not require a water purveyor to fund
30 or assume responsibility for ensuring compliance with any law or
31 regulation governing installation, approval of submeter type,
32 maintenance, reading, billing, and testing of water submeters and
33 associated onsite plumbing.

34 539. It is the intent of the Legislature that this chapter should
35 not be construed to impose costs on any local government agency,
36 except to the extent that the local government agency is a water
37 purveyor.